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July 2, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141

Dear Ms. Dortch:

Pursuant to the *Protective Order*¹ in the above-referenced proceeding, Puerto Rico Telephone Company, Inc. d/b/a Claro ("PRTC") submits a redacted version of the notice of ex parte filed as part of the above-referenced proceeding.

PRTC has designated, and received written approval to designate, as Highly Confidential the marked portions of the attached notice of ex parte. The Highly Confidential information appears after the headings **[[begin highly confidential information]]** and before the headings **[[end highly confidential information]]**. Please contact the undersigned with any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "E. R. Guzman", written over a horizontal line.

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¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, Protective Order (WCB rel. June 1, 2018).*



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Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC") hereby submits the instant letter in response to the two ex parte letters that WorldNet Telecommunications, Inc. ("WorldNet") filed in the instant proceeding on June 23, 2019, and on June 29, 2019.¹ Both ex parte letters were submitted after the Commission released the tentative agenda for the July Open Commission Meeting, which includes, among other things, a proposed Memorandum Opinion and Order partially granting price cap carriers forbearance from DS1 and DS3 transport unbundling and rejecting WorldNet's argument that forbearance "should be denied or subject to an extended transition period in Puerto Rico because of the state of the economy there, the effects of Hurricane Maria, and differences in the level of competition in the communications marketplace in Puerto Rico versus other parts of the country."² Reference is made to the following documents that have been filed in the instant proceeding: the ex parte letter that PRTC filed on April 26, 2019 ("PRTC April Ex Parte"); the ex parte letter that PRTC filed on June 11, 2019 ("PRTC June 11 Ex Parte"); the ex parte letter that PRTC filed on June 12, 2019 ("PRTC June

¹ See Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed June 23, 2019) ("WorldNet June 23 Ex Parte"); Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed June 29, 2019) ("WorldNet June 29 Ex Parte").

² *Business Data Services in an Internet Protocol Environment*, Report and Order on Remand (WC Docket No. 16-143 et al.) and Memorandum Opinion and Order (WC Docket No. 18-141), FCCCIRC 1907 (hereinafter "*Draft Transport Forbearance Order*"), attached to Federal Communications Commission, Fact Sheet, Eliminating Unnecessary Regulation of Price Cap Carriers' Transport Services and Facilities (rel., June 19, 2019); *id.* at 34 (¶ 73).

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12 Ex Parte”); the Reply Comments that PRTC filed on September 5, 2018 (“PRTC Reply Comments”); and the Petition for Forbearance of USTelecom – The Broadband Association, which was filed on May 4, 2018 (“Petition”).³

I. WORLDNET INSISTS ON MAKING ARGUMENTS ON THE STATE OF COMPETITION THAT ARE NOT BASED ON FACTS OR DATA

A. WorldNet Again Fails To Provide Any Data To Support Its Claim That Puerto Rico Is An Outlier

Despite substantial data in the record of this proceeding showing otherwise, WorldNet uses the June 23 Ex Parte to argue that “[t]elecommunications competition is not thriving in Puerto Rico” and that it is not “rivaling the levels of competition in the remainder of the country.”⁴ As has been the case with its prior filings in this proceeding, WorldNet’s argument is not based on facts. WorldNet points to data from 2016 to argue that PRTC “wireline market share” stands at more than 60 percent, but has no response to PRTC’s showing that these data have been rendered outdated by more recent data showing that PRTC’s total wireline switched access lines and share of total wireline connections have continued to drop precipitously since then. WorldNet rehashes the theory that the “wireline market share” is the only relevant metric for the Commission to consider, but it has no response to PRTC’s showing that, at a time when fixed wireless, mobile and over-the-top offerings are routinely used by customers as replacements to wireline services, focusing exclusively on total wireline connections provides an incomplete picture of the competitive options that consumers have and the extent to which consumers already are relying on solutions that have *nothing* to do with the UNE and Resale Obligation.⁵ And while WorldNet claims that the levels of competition in Puerto Rico are unlike those of the rest of the United States, it completely ignores PRTC comprehensive data-based showing that Puerto Rico is not an outlier when it comes to key metrics of competition.⁶

In short, WorldNet offers nothing new in terms of substance or data in the WorldNet June 23 Ex Parte. To the contrary, the WorldNet June 23 Ex Parte makes plain that WorldNet’s posture at this juncture boils down to two points: (1) that the Commission should *ignore* the data in the record—including data the Wireline Competition Bureau requested from PRTC—and make a finding that PRTC “dominates” based on innuendos about PRTC’s ownership and tenuous “bottom line” conclusions and (2) that the Commission should effectively rewrite the forbearance standard to a question of whether the ILEC is an “underdog”—this, even though whether an ILEC is an “underdog” is not the relevant standard for forbearance under section 160(c) of the Communications Act. Neither is a serious argument, and the Commission should reject them.

³ Petition for Forbearance of USTelecom – The Broadband Association, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (filed May 4, 2018).

⁴ WorldNet June 23 Ex Parte at 1.

⁵ See PRTC June 11 Ex Parte at 3-6.

⁶ See, e.g., *id.* at 4-6.

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B. The WorldNet Ex Parte Does Nothing To Disprove PRTC’s Showing That The UNE and Resale Obligation Is Irrelevant to Competition in Puerto Rico

WorldNet also claims that PRTC’s showing that the UNE and Resale Obligation has been rendered irrelevant to competition in Puerto Rico “is patently simplistic and false.”⁷ WorldNet does not come close to disproving PRTC’s showing, however, and its arguments sidestep the relevant question in this proceeding: whether the UNE and Resale Obligation is necessary today and in the future to promote competitive market conditions.

WorldNet’s threshold argument is that PRTC relied on “naked numbers” when it showed that the UNE and Resale Obligation has been rendered irrelevant to competition in Puerto Rico.⁸ This a perplexing contention. PRTC has relied on data from different sources—including proprietary billing data, data from the Puerto Rico Telecommunications Bureau, and both confidential and public data from the Commission—and in every instance it has explained their provenance, put them in context, and explained their implications when it comes to critical issues that WorldNet itself raised in this proceeding, including how the competitive landscape in Puerto Rico compares to the rest of the United States and how irrelevant the use of the UNE and Resale Obligation has become in Puerto Rico. If anything, it has been WorldNet—not PRTC—that has been inviting the Commission to rely on a single “naked” number by insisting that the only relevant statistic for the Commission to consider—without providing any context—is the total number of PRTC wireline connections from almost three years ago.

The WorldNet June 23 Ex Parte also illustrates WorldNet’s continued confusion as to the applicable forbearance standard. The issue in this proceeding is not whether non-ILECs that have chosen to continue to rely on the UNE and Resale Obligation contribute to the Puerto Rico economy or whether they contributed to the promotion of competition twenty years ago. Instead, the question is whether the continued application of the UNE and Resale Obligation is necessary today and in the future to ensure that telecommunications services are offered at rates, terms, and conditions that are just and reasonable and not unjustly or unreasonably discriminatory, and whether its elimination would promote competitive market conditions.⁹ WorldNet has not come close to showing this.

Finally, WorldNet argues that the UNE and Resale Obligation is not irrelevant to competition on the theory that there are “more than 3,000 government and small- and medium-sized business [sic] . . . that have come to depend on the innovative and tailored telecommunications services that WorldNet has given them through the use of UNEs and resale.”¹⁰ WorldNet then accuses PRTC of being “quick to write these thousands of government and business customers off as completely ‘irrelevant’” and argues that it is not in the “public

⁷ WorldNet June 23 Ex Parte at 2.

⁸ *Id.*

⁹ See 47 U.S.C. § 160(a)(1)-(3); *United States Telecom Ass’n v. FCC*, 825 F.3d 674, 727 (D.C. Cir. 2016); see also Petition at 20-21.

¹⁰ WorldNet June 23 Ex Parte at 3.

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interest” to impose on these customers what WorldNet calls the “burdens” of forbearance.¹¹ WorldNet is wrong.

First, PRTC has *never* argued that government and small and medium-sized customers are irrelevant. Instead, what PRTC has shown—and it restates in this filing—is that the UNE and Resale Obligation has become irrelevant to competition in Puerto Rico in the same manner in which it has become irrelevant in the rest of the United States. That is a fact supported by data that WorldNet has been unable or unwilling to refute, including that showing that (1) **[[begin highly confidential information]]** **[[end highly confidential information]]**, no other non-ILEC in Puerto Rico has a business model that relies on the UNE and Resale Obligation; (2) the total number of loops that PRTC provides on an unbundled basis represents less than **[[begin highly confidential information]]** **[[end highly confidential information]]** percent of total wirelines connections in Puerto Rico; and (3) the vast majority of non-ILEC lines in Puerto Rico today are not served by CLECs that rely on the UNE and Resale Obligation.¹² WorldNet’s continued silence as to these critical facts, and its attempt to distract by attributing to PRTC statements that it has not made, speak volumes.

Second, WorldNet’s view of the purported burdens that governmental and small and medium-sized businesses would face if the Commission grants forbearance does not square with PRTC’s own experience and the realities of the Puerto Rico market. Customers in Puerto Rico—including the numerous government and small and medium-sized businesses that PRTC serves—increasingly appreciate the better value proposition that IP-based services provide. In PRTC’s experience these transitions take place routinely and do not come close to imposing the operational burdens to which WorldNet alludes. Moreover, other providers in Puerto Rico that do not rely at all on the UNE and Resale Obligation, including Liberty Cablevision, AeroNet, and Optivon, expressly target and serve small and medium-sized businesses and have become PRTC’s key competitors in that segment; indeed, one year after Hurricane Maria, Liberty was publicly celebrating its significant growth in the small and medium-sized business segment.¹³ All of this is reflective of a market where government and small and medium-sized businesses for years now have been transitioning to non-TDM services and/or to providers that do not rely at all on the UNE and Resale Obligation. The suggestion that government and small and medium-sized businesses are resistant to this transition, or would not have competitive service offerings if the UNE and Resale Obligation is eliminated, is simply not reflective of the realities of the market.

Third, WorldNet’s argument is based on the flawed assumption that, if forbearance is granted, WorldNet would not be able to continue to serve these customers. As a threshold matter, the question in this proceeding is what is best for *competition*, not what is best for **[[begin highly confidential information]]** **[[end highly confidential information]]** that decided to cling to a business model that assumes the continued existence of

¹¹ *Id.* at 3.

¹² *See* PRTC April Ex Parte at 10.

¹³ *See, e.g.,* Michelle Kantrow-Vazquez, Liberty Puerto Rico Reports 3Q18 Growth, Driven by 22K New Customers, News Is My Business (Nov. 9, 2018).

the UNE and Resale Obligation. But even if, *arguendo*, the focus were to turn to WorldNet, the assumption is wrong. WorldNet always has the option of deploying its own facilities to offer TDM or IP-based services without relying on the UNE and Resale Obligation, much like every other provider in Puerto Rico has done. If WorldNet wished to do so, it could supplement the deployment of these facilities by leasing facilities from the many other providers that compete with PRTC in the Puerto Rico wholesale market. Alternatively, and in the event that a subset of the customers that WorldNet currently serves through the use of analog DS0 loops or resale under 251(c)(4) do not want to transition to IP-based services, nothing stops WorldNet from continuing to resell the same TDM service under section 251(b)(1) of the Communications Act to minimize any transition. And in the case of customers that WorldNet currently serves through the use of DS1 or DS3 loops, WorldNet can lease DS1 or DS3 channel termination from PRTC—in a market that the Commission has declared competitive—to continue to serve those customers without any burdensome transition or it can lease fiber facilities from other providers and offer TDM voice services along with any other telecommunications or data services that the customer requests. While WorldNet would not be able to rely on subsidized components of PRTC’s network to provide these services if the Commission grants forbearance, it would have the *same* opportunity as every other non-ILEC provider in Puerto Rico that does not rely on the UNE and Resale Obligation.

II. WORLDNET CONFIRMS THAT IT HAS NO RESPONSE TO PRTC’S SHOWING THAT THE CONDITIONS IN PUERTO RICO DO NOT JUSTIFY EXCLUDING IT FROM NATIONWIDE FORBEARANCE

WorldNet also rehashes its argument that the Commission should not grant forbearance on account of the economic challenges that Puerto Rico is facing.¹⁴ PRTC already has addressed this argument in full, and it respectfully refers the Commission to that discussion.¹⁵ What is plain, however, is that WorldNet has no answer to the undisputed fact that the transition away from the UNE and Resale Obligation that WorldNet claims could not take place during challenging economic times took off—and has continued—during the very challenging economic times that WorldNet portrays as an insurmountable impediment. WorldNet has no response to this flaw in its logic.

PRTC also notes that the Commission’s approach in the Draft Transport Order illustrates how minimal measures applied on a nationwide basis can offset WorldNet’s argument for treating Puerto Rico differently. As the Draft Transport Order notes—and PRTC agrees—a transition period along the lines of that proposed in the Petition addresses concerns related to the timing of a post-forbearance transition.¹⁶ WorldNet is silent as to this issue.¹⁷

¹⁴ See WorldNet June 23 Ex Parte at 4-6.

¹⁵ See PRTC June Ex Parte at 7; PRTC June 12 Ex Parte at 4-5.

¹⁶ See Draft Transport Order at 34 (¶ 73).

¹⁷ The WorldNet June 23 Ex Parte makes no mention of the Draft Transport Order. The WorldNet June 29 Ex Parte states that WorldNet met with staff from the Wireline Competition Bureau to discuss its “opposition to the US Telecom Petition for Forbearance as applied to Puerto Rico,” WorldNet June 29 Ex Parte at 1, but it does not state whether it discussed the Draft Transport Order or advocated for any changes to that document.

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Moreover, the proposal in the Draft Transport Order to grant forbearance from the obligation to unbundled dedicated transport “along routes where competitive fiber is present within a half mile of each UNE-triggering endpoint (i.e., the Tier 2 or Tier 3 wire center that triggers the unbundling obligation)” based on the April Data Tables addresses any concern that competitive considerations in Puerto Rico justify treating the island as an outlier.¹⁸ There can be no serious argument that forbearance from the obligation to unbundle dedicated transport would be contrary to the public interest or would harm competition if it is limited to such routes. And while PRTC believes that full forbearance should be granted as to UNE loops as requested in the Petition, it notes that, if granted on a nationwide basis, USTelecom’s narrower request to grant relief from unbundling UNE loops “in areas subject to facilities-based competition”¹⁹ would also offset any WorldNet argument that the conditions in Puerto Rico justify treating the island as an outlier as it relates to the obligation to unbundle loops.

III. CONCLUSION

For the reasons set forth above, in the Petition, in the PRTC Reply Comments, and the ex parte communications that PRTC has filed in the instant proceeding, Puerto Rico should not be excluded from any grant of forbearance that is granted on a nationwide basis. In this regard, PRTC supports the proposal in the Draft Transport Order to extend to Puerto Rico the partial forbearance from the obligation to unbundled dedicated transport and it urges to Commission to include Puerto Rico in any grant of forbearance from the obligation to unbundled loops.

Respectfully submitted,



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¹⁸ See Draft Transport Order at 24 (¶ 52).

¹⁹ Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket No. 18-141 (May 6, 2019); *id.* at 3-8.